

3 June 1968

MEMORANDUM FOR THE RECORD

SUBJECT: Using the Charge of Draft Evasion Against VC Suspects

1. Purpose: To enable RVN authorities to imprison VC suspects where sufficient evidence of VC activities is said to be lacking.
2. One of the most serious difficulties in imprisoning a VCS after capture is that of presenting sufficient evidence to convict the suspect of illegal VC activities. High-level infrastructure types will usually not be engaged in illegal or subversive activity at the time of their capture; often no tangible evidence, such as documents, contraband materials, weapons, etc., is brought in with the capturee; witnesses such as Hoi Chanh, other VC prisoners, informants, etc., are extremely reluctant to testify against a suspect.
3. Therefore, police and province security committees have the difficult task of preparing a case and continuously detaining a known VC (usually known on the basis of intelligence - not judicial evidence). This may result either in the outright release of a suspect or leaving the VCS languishing in an overcrowded, unsegregated, insecure jail without the benefit of an administrative or judicial hearing and sentencing. The prisons are crowded with uninterrogated, unsentenced prisoners. The reason most often heard for such outright release, unreasonable delay in processing, or unwarranted detention without hearing is the insufficiency of evidence of VC activities or any activities endangering national security.
4. The charge of Violation Against National Obligation (draft dodging) could be brought against these VC suspects against whom sufficient evidence of VC activities is impossible to collect. Proving this charge is manifestly simpler, and the burden of collecting sufficient evidence of this violation is much lighter.

"Are sentenced to solitary confinement with hard labor those youths:

- Who use fraudulent manners or tricks so as to avoid presenting themselves when they reach the age (this is presently 18 years of age) to fulfill their military obligations."

(Article 10, Part Three, "Violations Against National Obligations," Decree - Law #004/65 dated 19 July 1965.)

Article 11 of this Decree - Law states as follows:

"Will be considered as failure to report for induction and sentenced:

- To solitary confinement with hard labor - those who receive the call orders or recall orders which have been properly notified to them but fail to report themselves to the designated place within 20 days ...

... - To 3 years of imprisonment: A citizen who knows that his particular draft registration number is printed in a public Notice for Induction ..."

5. This Decree - Law is complemented by Decree - Law #004/66 dated 15 February 1966. Apparently Article 11 is amended as follows:

"Three years of imprisonment: Any citizen who knows he is called or recalled to military service under a collective draft or not and fails to report to the military authorities at his place of residence within 15 full days ..." Article II, Decree - Law #004/65 dated 19 July 1965.

6. Decree - Law #152 - SL/QP dated 25 Oct 1967 decrees that:

"Art 1. Due to National Defense requirements, this prescribes that age categories 18 to 33 are hereby subject to Partial Mobilization ... and during this period, the following measures are to be taken:

Art 2. Conscription of youths in the age category 18 to 33 ...

Art 3. The conscription of youths and the recall of ex-servicemen to active service, as mentioned in Article 2, will be implemented gradually by a collective draft communique from the Ministry of Defense ...

Art 5. Except for cases of exemption and deferment from military service on physical grounds prescribed by existing procedures, and draft deferment for police personnel and RD cadres, this cancels all draft deferments for service or occupational reasons.

Draft deferments for educational and religious reasons and for youths going abroad to study who are in the Partial Mobilization age group will be limited, and the standards for these limitations will be prescribed by the Cabinet." This decree went into effect 1 January 1968.

7. These decrees, along with Edict #29, dated 29 June 1953, which describes the basic military service system, provide the basis for which a detainee who has failed to report for induction or avoided the draft may be prosecuted.

8. The problem in this type of prosecution is the availability of evidence proving a violation of these laws. Never-the-less, when the suspect detainee is within the age draftable (18-33), the burden of proof is on him. Failure to produce any document proving an appearance before a draft board, a census board, or non-possession of a deferment, coupled with a lack of explanation why the detainee has not been drafted, is sufficient evidence to continue to hold such a person. The excuse of lack of evidence of VC activities should be overcome by the burden of bringing forth evidence regarding national obligation.

9. The other problem attending this type of approach to VC suspects is what judicial or quasi-judicial body should hear this case. Technically, the military tribunals has jurisdiction. Never-the-less, it should be kept in mind that the purpose of this approach is to imprison VC, not to round up draft dodgers, of which there are many thousands who are not engaged in VC activities. Moreover, the military courts are overburdened already. Finally, the difficulties of transporting these types of prisoners to Region, where the courts usually hold trial, is often difficult and leads to inordinate delays in processing and paperwork.

10. The Province Security Committees should have the competence and jurisdiction to administratively detain these suspects up to 2 years. Intelligence, black-lists, hearsay, or whatever of VC activity (although perhaps legally insufficient evidence) when coupled with evidence of a violation against National Obligation should give any PSC sufficient grounds to detain.

11. At the very least, the oft-heard excuse by district officials and police officials that there is lacking tangible or documented evidence of VC activities will be radically under-cut, especially where the suspect is within draft age.

ROBERT F. GOULD